

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

GERALD RUSSELL ,

Petitioner,

v.

RAYMOND MARCHILLI,

Respondent.

\*

\*

\*

\*

\*

\*

\*

\*

\*

Civil Action No. 15-cv-13177-ADB

ORDER

BURROUGHS, D.J.

Gerald Russell is appealing the denial of his petition for a writ of habeas corpus under 28 U.S.C. § 2254. He has already paid the appeal fee of \$505, but he seeks indigent status for the purpose of appointment of counsel. For the reasons set forth below, the Court DENIES the petitioner's motion to appeal *in forma pauperis*. Russell may refile a motion to appeal *in forma pauperis* with the United States Court of Appeal for the First Circuit.

Under the Federal Rules of Appellate Procedure, a person moving for leave to appeal *in forma pauperis* must attach to his motion an affidavit that “(A) shows in the detail prescribed by Form 4 of the Appendix of Forms [to the Federal Rules of Appellate Procedure] the party's inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal.” Fed. R. App. P. 24(a)(1).

Russell has submitted his prison account statement and the first page of an Application to Proceed in District Court without Prepaying Fees or Costs (Short Form). The latter is a two-page form used in the District Court and it does not elicit the more detailed financial information required under Rule 24(a)(1) of the Federal Rules of Appellate Procedure. Further, Russell did

not submit a statement of the issues he intends to present on appeal. Without this information, the Court cannot grant the petitioner's motion to appeal *in forma pauperis*.

Accordingly:

(1) The motion to appeal *in forma pauperis* is DENIED. If Russell wishes to pursue *in forma pauperis* status on appeal, he may, within thirty (30) days, file a new motion for leave to appeal *in forma pauperis* with the United States Court of Appeals for the First Circuit. *See* Fed. R. App. P. 24(a)(5).<sup>1</sup>

(2) The Clerk is directed to send Russell a copy of the form financial affidavit used by the United States Court of Appeals for the First Circuit.

(3) The Clerk is directed to transmit a copy of this order to the United States Court of Appeals for the First Circuit.

IT IS SO ORDERED.

Dated: 4/1/2019

/s/ Allison D. Burroughs  
ALLISON D. BURROUGHS  
DISTRICT JUDGE

---

<sup>1</sup> Rule 24 of the Federal Rules of Appellate Procedure provides:

A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice [of the district court's order denying the motion to appeal in forma pauperis]. The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

Fed. App. P. 24(a)(5).